

Message Text

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PAGE 01 TEHRAN 03540 01 OF 03 160503Z
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C O N F I D E N T I A L SECTION 1 OF 3 TEHRAN 3540

LIMDIS

E.O. 11652: GDS
TAGS: SHUM IR
SUBJ: IRAN'S OBSERVATIONS ON DEPARTMENT'S HUMAN RIGHTS
REPORT ON IRAN

REF: TEHRAN 3220

1. PURSUANT TO DISCUSSION BETWEEN DEPUTY FOREIGN MINISTER ZELLI AND AMBASSADOR (REFTEL), EMBOFF STEMPER CALLED ON DEPUTY HEAD OF INTERNATIONAL ORGANIZATIONS DIVISION SEIFOLLAH SADEGHI WHO SAT IN ON ZELLI-SULLIVAN CONVERSATION FOR READING OF MFA LEGAL BRIEF WHICH SADEGHI TERMED "OBSERVATIONS" ON REPORT.
2. AT OUTSET, SADEGHI SAID HE HAD BEEN ASKED ON BEHALF OF ZELLI TO MAKE OBSERVATION THAT IF U.S. STATE DEPARTMENT IS OBLIGED TO GIVE SUCH A REPORT TO CONGRESS, WHY WAS IT NOT MORE ACCURATE? HE EXPRESSED HOPE THAT INFORMATION PROVIDED BY IRAN IN "INFORMAL EXCHANGE BETWEEN FRIENDLY GOVERNMENTS" WOULD BE USED TO MAKE FUTURE U.S. REPORTS MORE "OBJECTIVE".
3. FOLLOWING OBSERVATIONS MADE IN IRANIAN BRIEF'S
PREAMBLE: THE STATE DEPARTMENT'S REPORT TO CONGRESS
"CONTAINS CERTAIN MISLEADING OR ERRONEOUS ASSERTIONS
CONFIDENTIAL

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PAGE 02 TEHRAN 03540 01 OF 03 160503Z

PARTLY ATTRIBUTABLE TO INSUFFICIENT UNDERSTANDING OF JUDICIAL PROCESSES AND PROCEDURES IN IAN, WHICH IN TURN IS A RESULT OF ORGANIZ DIFFERENCES BETWEEN THE JUDICIAL SYSTEMS IN THE TWO COUNTRIES". IRANIAN BRIEF NOTED THAT COMMENTS ON CERTAIN PASSAGES DO NOT NECESSARILY IMPLY ENDORSEMENT OF OTHER PASSAGES.

4. CONCERNING ARBITRARY ARREST CASES, BRIEF SAID "IRANIAN LAW DOES NOT COMBINE THE DUTIES OF SAVAK AND THE EXAMINING MAGISTRATE AS ALLEGED. ASSERTIONS REGARDING ARBITRARY ARREST ARISE FROM THE SAME MISUNDERSTANDING" OF THE LAW ESTABLISHING SAVAK. "APPROPRIATE OFFICIALS OF SAVAK IN DISCHARGE OF THEIR RESPONSIBILITIES AS DEFINED BY LAW (ARTICLE 2) ARE INVESTED WITH THE AUTHORITY OF MILITARY LAW ENFORCEMENT OFFICIALS. WITHIN ITS RESTRICTED SENSE OF POLICE FUNCTION, THIS MEANS THAT IN CASES FALLING WITHIN THE PURVIEW OF SAVAK'S RESPONSIBILITIES, THAT IS TO SAY CRIMES AGAINST THE STATE, SAVAK AGENTS WILL ACT AS MILITARY POLICE UNDER THE SUPERVISION OF MILITARY JUDICIAL OFFICIALS."

5"IN CASES OTHER THAN FLAGRANT CRIMES (AS DEFINED IN MILITARY PENAL CODE BOOK III, CHAPTER 1, ARTICLES 126-129), ARRESTS OF SUSPECTS ARE MADE UNDER WARRANT ISSUED BY MILITARY ATTORNEYS. IN PRACTICE AS REPRESENTATIVE OF THE MILITARY ATTORNEYS IS PHYSICALLY PRESENT AT THE TIME OF EACH ARREST. IT CAN BE SEEN FROM THE ABOVE AS FAR AS ARRESTS OF SUSPECTS IS CONCERNED, DUE PROCESS HAS BEEN PROVIDED BY LAW AND STRICTLY OBSERVED AND PRACTICED. NEEDLESS TO SAY, VIOLATIONS OF DUE PROCESS ARE PUNISHABLE UNDER THE LAW, AND THERE WILL BE NO HESITATION TO TAKE CRIMINAL ACTION AGAINST THE PERPETRATORS OF SUCH VIOLATION."

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PAGE 03 TEHRAN 03540 01 OF 03 160503Z

6. THE BRIEF'S NEXT SECTION COVERS THE DETENTION OF INDIVIDUALS FOR UP TO SEVERAL MONTHS AND NOTES: "THE INITIAL INVESTIGATION CONDUCTED BY SAVAK FALLS WITHIN THE SCOPE OF THEIR RESPONSIBILITIES AS MILITARY LAW ENFORCEMENT OFFICIALS AND IS THE EQUIVALENT OF POLICE INITIAL QUESTIONING IN ANY OTHER SYSTEM. ARTICLE 124 AND 125 OF THE MILITARY PENAL CODE DEFINE THE SCOPE OF THIS INVESTIGATION." THIS INVESTIGATION RELATES TO DEFINING THE CHARGES "RECEIVING COMPLAINTS, PREPARATION OF REPORTS ON EVIDENCE AND CIRCUMSTANCES SURROUNDING THE CRIME, PREPARATION OF PROCESS VERBAUX OR STATEMENTS OF EYEWITNESSES AND CONFISCATION OF ANY DOCUMENTS AS MATERIAL EVIDENCE RELATED TO THE CRIME. AS SOON AS THE INVESTIGATION IS CLOSED, SAVAK IS DUTYBOUND TO TRANSFER THE FILE OF THE SUSPECT TO THE MILITARY JUSTICE DEPARTMENT, A SEPARATE JUDICIAL ENTITY. THIS ALLOWS PROPER JUDICIARY PROCESSES TO BEGIN."

7. "IN PRACTICE, ACCORDING TO REPORTS SUBMITTED BY THE MINISTRY OF JUSTICE TO THE PRIME MINISTER'S OFFICE, THE PERIOD OF DETENTION BY SAVAK HAS NOT NORMALLY EXCEEDED 24 HOURS, FOLLOWING WHICH THE SUSPECT HAS EITHER BEEN

RELEASED OR BROUGHT BEFORE A MILITARY MAGISTRATE. THE
LATTER WOULD THEN DETERMINE CHARGES AGAINST THE SUSPECT
AND ISSUE THE APPROPRIATE WARRANT FOR DETENTION, RELEASING

CONFIDENTIAL

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PAGE 01 TEHRAN 03540 02 OF 03 160529Z
ACTION NEA-07

INFO OCT-01 SS-14 ISO-00 HA-02 IO-06 NSC-05 CIAE-00
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C O N F I D E N T I A L SECTION 2 OF 3 TEHRQN 3540

LIMDIS

ON BAIL OR ALTERNATIVELY FOR DISMISSAL OF THE CASE.
ARRAIGNMENT MUST BE DONE WITHIN 24 HOURS (ARTICLE 164).
THE LAW GIVES THE ACCUSED THE RIGHT TO HAVE RECOURSE TO
TRIBUNALS TO PROTEST AGAINST THE WARRANT. A PROLONGED
DETENTION IN EXCEPTIONALLY COMPLEX CASES REQUIRES
CONCURRENCE OF THE MILITARY ATTORNEY AND EXAMINING
MAGISTRATE, AS WELL AS THE RULING OF THE COURT SHOULD
THE DEFENSE HAVE FILED OBJECTION TO SUCH DETENTION.
ACCORDING TO A MINISTRY OF JUSTICE REPORT, SUCH CASES
CONSTITUTE NO MORE THAN ONE PERCENT OF THE CASES BEFORE
THE MILITARY JUSTICE DEPARTMENT. IT CAN BE SEEN FROM THE
ABOVE THAT ALLEGATIONS OF ARBITRARY IMPRISONMENT AND
PROLONGED HOLDING OF PRISONERS WITHOUT FORMAL CHAGES COULD
HARDLY SUSTAIN THE TEST OF CLOSE SCRUTINY."

8. THE BRIEF REFERS TO DEPARTMENT'S REPORT REMARKS ON
THE LEGAL COUNSEL FOR DETAINEES: "IT IS TRUE THAT
APPLICABLE LAW MAKES NO PROVISION FOR LEGAL COUNSEL FOR
THE ACCUSED DURING THE INVESTIGATION BY THE EXAMINING
MAGISTRATE. HERE THE LAW MAKERS ASSUMPTION HAS BEEN
THAT THE EXAMINING MAGISTRATE, BEING AN IMPARTIAL INVESTIGATING
JUDGE, WILL, FOR ALL PRACTICAL PURPOSES, ACT IN A DUAL CAPACITY
BOTH AS DEFENSE COUNSEL AND PROSECUTOR IN SO FAR AS THIS
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PAGE 02 TEHRAN 03540 02 OF 03 160529Z

MANDATE BINDS HIM TO INVESTIGATE THE TRUTH. (THIS PARADOX IS EXAMINED IN ARTICLE 157-8 OF THE PENAL CODE WHEREBY IT STATES THAT THE EXAMINING MAGISTRATE SHALL CONDUCT HIS INVESTIGATION WITH COMPLETE IMPARTIALITY AND SHALL BE INDISCRIMINATING IN COLLECTION OF VIDENCE WHETHER FOR OR AGAINST THE DEFENSE. HE SHALL GET MULTIPLE EXPERT OPINIONS IN CASES WHERE SUCH OPINIONS ARE NEEDED.) IT IS NONETHELESS THOUGHT THAT THE PRESENCE OF THE DEFENSE COUNSEL DURING THE PERIOD OF INVESTIGATION BY THE EXAMINING MAGISTRATE MAY IMPROVE DUE PROCESS AND AS SUCH IS BEING ACTIVELY CONSIDERED."

9. WITH RESPECT TO CIVIL AND POLITICAL LIBERTIES IN THE STATE DEPARTMENT REPORT, THE IRANIAN BRIEF HAD TWO SPECIAL COMMENTS. IT FELT THAT THE STATE DEPARTMENT PRASEOLOGY IMPLIED "THAT EXPRESSION OF DISSENT IN IRAN ESULTS IN PENALTIES AND IS THUS HAMPERED OR DETERRED." THE MFA BRIEF NOTD "APART FROM THE FACT THAT CRITICISM OF THE GOVERNMENT POLICY AND ACTIONS IS FREELY EXPRESSED THROUGH THE PUBLIC MEDIA INCLUDING THE GOVERNMENT OWNED RADIO AND TV (ACKNOWLEDGED IN THE REPORT). IT IS KNOWN THAT POLITICAL DISSENT OF A MORE VIRULENT VARIETY HAS ALSO BEEN TOLERATED AND IN SOME CASES, EVEN PUBLICLY DEBATED THROUGH THE PRESS. NO LAW-ABIDING CITIZEN HAS EVER BEEN PROSECUTED IN IRAN FOR SHEER POLITICAL BELIEF."

10. ON SECOND POINT, MFA BRIEF SAYS "THE WRITERS ASSOCIATION OF IRAN, WHOSE REACTIVIZATION IS SAID TO BE DEMANDED BY PEN, HAS NEVER EXISTED TO BEGIN WITH. THERE IS WIDE DEGREE OF LITERARY FREEDOM IN IRAN RESTAINED ONLY BY PROFANATION OR MATERIAL OFFENSIVE TO THE RELIGIOUS CONVICTIONS OF THE PEOPLE. MANY LITERARY CLUBS, INCLUDING AN IRANIAN CHAPTER OF PEN, FREELY OPERATE AND

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PAGE 03 TEHRAN 03540 02 OF 03 160529Z

PUBLISH IN IRAN."

11. ABOVE IS VIRTUALLY COMPLETE VERBATIM TEXT OF IRANIAN BRIEF.

12. EMBOFF REPLIED THAT USG WOULD CERTAINLY REVIEW GOI'S THOUGHTS CAREFULLY AND REITERATED AMB SULLIVAN'S VIEWS ABOUT THE IMPORTANCE OF UNDERSTANDING THE IRANIAN JUDICIAL SYSTEM (REFTEL). SADEGHI REPEATED POINT THAT GOI WISHED U.S. REPORT TO BE AS ACCURATE AS POSSIBLE. HE STRESSED THAT EVEN THOUGH GOI WAS NOT RESPONSIBLE TO ANYONE FOR

ITS INTERNAL POLICIES, VIEWS WERE BEING SHARED WITH USG
IN SPIRIT OF HELPFUL EXCHANGE BETWEEN FRIENDS. EMBOFF
EXPRESSED SIMILAR PLEASURE AND USED OPPORTUNITY TO RAISE
AGAIN QUESTION OF CONTACT POINT WITH MFA FOR FURTHER
INFORMAL DISCUSSIONS TO CLARIFY POINTS WHICH MAY ARISE
IN FUTURE. SADEGHI SAID MAY OTHER COMMENT AND DISCUSSION
ON MATTER SHOULD BE HANDLED WITH ZELLI AGAIN. (COMMENT:
THIS WAS IN CONTRAST TO MFA'S AMERICAN DEPARTMENT OFFER
ON PREVIOUS DAY, INDICATING IT WAS READY TO EXCHANGE VIEWS
ON HUMAN RIGHTS, "ESPECIALLY THOSE THAT ARE GOING TO HAVE
SOME IMPACT ON POLITICAL RELATIONS." SADEGHI TACITLY
ADMITTED MFA HAD MISSED ITS SIGNALS WHEN HE TOLD EMBOFF
TO DISREGARD PRIOR CONVERSATION WITH AMERICAN DEPT. FROM
THIS AND EARLIER SADEGHI COMMENT ON BEHALF OF ZELLI,
EMBOFF FORMED IMPRESSION IRANIAN POSITION HAD STIFFENED
SLIGHTLY IN INTERVENING DAYS BETWEEN ZELLI-SULLIVAN
TALK AND MEETING TO READ IRANIAN LEGAL BRIEF. SADEGHI
REFUSED TO GO BEYOND READING OF BRIEF TO DISCUSSION OF
POINTS.)

13. FOLLOWING PARAGRAPHS ARE EMBASSY'S SUBSTANTIVE
COMMENT ON IRANIAN BRIEF. EMBASSY HOPES DEPT WILL
ANALYZE IRANIAN POINTS CAREFULLY. WE HOPE THIS PRESENTA-
TION CAN BE WEDGE TO OPEN UP BROADER INFORMAL DIALOG WITH
MFA AND EVENTUALLY OTHERS, INCLUDING MINUSTICE. WITH
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PAGE 04 TEHRAN 03540 02 OF 03 160529Z

RESPECT TO PARAS 4 AND 5 ABOVE, FOR EXAMPLE, WE WOULD LIKE
TO EXPLORE INFORMALLY ARCAINE LEGAL PRESENTATION IN TERMS
OF ACTUAL PRACTICE. IT IS NOT CLEAR TO US WHETHER

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PAGE 01 TEHRAN 03540 03 OF 03 160537Z

ACTION NEA-07

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INR-05 NSAE-00 L-01 SP-02 /043 W

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C O N F I D E N T I A L SECTION 3 OF 3 TEHRAN 3540

LIMDIS

"MILITARY ATTORNEY" IS THE SAME AS "EXAMINING MAGISTRATE" OR NOT (WE THINK PROBABLY NOT). AS USED IN THIS BRIEF, THERE IS NOTHING TO PREVENT THEM FROM BEING THE SAME. SIMILARLY, WHILE SAVAK OFFICER MAY BE ACTING AS MILITARY PPICEMAN, IT APPEARS POSSIBLE THAT HE COULD ALSO BE "REPRESENTATIVE OF MILITARY ATTORNEY'S OFFICE", EVEN THOUGH THRUST OF GOI PRESENTATION IS THAT HE IS NOT. THIS MAY BE INSTANCE WHERE GOI INTENTION IS LEGITIMATE AND ACCEPTABLE, BUT PRACTICE HAS NOT ALWAYS BEEN UP TO PAR, OR PERCEPTION OF PRACTICE CLOUDED BY LEGALISMS IN HOARY FRENCH TRADITION.

14. QUESTION OF LENGTH OF DETENTION OF INDIVIAUALS (PARA SIX ABOVE) ALSO RAISES QUESTION OF LEGAL TERMINOLOGY, PLUS UNCERTAINTY AS TO MEANING OF "INITIAL INVESTIGATION". IF PRESENTING FILE TO MAGAISTRATE WITHIN 24 HOURS AFTER COMPLETION OF "INITIAL INVESTIGATION" IS INTENDED THEN GOI STATEMENT PROBABLY CORRECT. IF IT MEANS DETENTION LASTS ONLY 24 HOURS BEOFRE INVESTIGATION FINISHED AND PRESENTED, (AS SUGGESTED), THEN OPPOSITION CAN ALMOST CERTAINLY SHOW MANY CASES OF DETENTIONS WHICH HAVE LASTED BEYOND 24 HOURS BEFORE "INITIAL INVESTIGATION" WAS COMPLETED, AND MANY WILL DISPUTE IRANIAN CONTENTION THAT "PROLONGED DETENTIONS" CONFIDENTIAL

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PAGE 02 TEHRAN 03540 03 OF 03 160537Z

CONSTITUTE NO MORE THAN ONE PERCENT OF CASES.

15. IN CASE OF LEGAL COUNSEL FOR DETAINEES, BRIEF ACCEPTS POSSIBILITY OF IMPROVING DUE PROCESS BY ADDING THIS FEATURE, AND NOTES IT IS UNDER CONSIDERATION. EMBASSY KNOWS FROM OTHER DISCUSSIONS THAT SUBJECT IS ON DOCKET OF MINJUSTICE SPECIAL COMMITTEE WHICH HAS BEEN REVIEWING LAWS SINCE LAST SUMMER AND WHICH WAS RESPONSIBLE FOR ADMINISTRATIVE CHANGES MADE LAST YEAR TO SMOOTH OUT COURT SYSTEM. DEFENSE OF EXAMINING MAGISTRATE AS UNBIASED JUDGE SEEMS UNDERCUT IN BRIEF ITSELF BY SUGGESTION THAT CHANGE BEING CONSIDERED.

16. BRIEF'S WEAKEST SECTION IS IN PARA NINE ABOVE ON CIVIL AND POLITICAL LIBERTIES. BRIEF DOES MAKE VALID AINT THAT IN PRESENT IME FRAME, SUBSTANTIAL DISSENT IS BEING ALLOWED. HOWEVER, SECTION IS FLAWED BY FINAL SENTENCE WHICH SAYS NO LAW-ABIDING CITIZEN HAS EVER BEEN PROSECUTED FOR HIS POLITICAL BELIEFS. WHILE SUCH MAY BE

LESS THE CASE NOW THAN IN PAST, WE FEEL IT WOULD BE HARD FOR OBJECTIVE OBSERVER TO AGREE WITH GOI BRIEF EVEN TODAY, THOUGH SUBJECT MUST BE HANDLED CAREFULLY SINCE EVEN ANTI-COMMUNIST LAW PROVIDES PENALTIES ONLY FOR ACTIONS SUCH AS MEMBERSHIP IN TUDEH PARTY OR ADVOCACY RATHER THAN MERE BELIEF. IN FACT, WE HAVE HEARD FROM VARIETY OF SOURCES OF PEOPLE ARRESTED FOR MERE POSSESSION OF CERTAIN BOOKS, EVEN BOOKS OPENLY SOLD IN TEHRAN BOOKSTORES. ALL THIS WOULD BE HARD TO DOCUMENT, HOWEVER.

16. POINT REGARDING WRITER'S ASSOCIATION, PARA TEN ABOVE, IS, AS FAR AS WE CAN TELL, CLEVER POLITICAL PHRASEOLOGY. WHILE IT IS TRUE THAT WRITER'S ASSOCIATION HAS NEVER BEEN CONFIDENTIAL

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PAGE 03 TEHRAN 03540 03 OF 03 160537Z

ALLOWED TO REGISTER AS AN ORGANIZATION, IT HAS CERTAINLY "EXISTED" IN PRACTICAL SENSE OF GROUP OF PEOPLE WHO MEET FROM TIME TO TIME AND HAVE FORMALLY APPLIED TO REGISTER. POINT ON IRANIAN PEN AND OTHERS BEING FREE IS TRUE, BUT PERHAPS MORE IN LEGAL RATHER THAN PRACTICAL SENSE.

17. IN VIEW OF FORTHCOMING MEETING OF ICJ'S WILLIAM BUTLER WITH SHAH, DEPT MAY WISH BRIEF HIM ON IRANIAN VIEWS. FROM EMBASSY'S PERSPECTIVE, WE WOULD WELCOME BUTLER (AND OTHERS WITH LEGAL EXPERIENCE AND BALANCED JUDGMENT) DISCUSSING THESE POINTS WITH IRANIANS. WE FEEL EMBASSY'S REACTION SHOULD NOT RPT NOT BE SNEGATIVE OR HOSTILE BUT MORE IN TERMS OF SEEKING ADDITIONAL CLARIFICATION AND EXPANDING DIALOGUE. SULLIVAN

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